

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAN M. LINER,

Petitioner,

vs.

STATE OF NEBRASKA, SCOTT R.
FRAKES, Director, Nebraska
Correctional Services; and MICHELL
CAPPS, Warden, Nebraska State
Penitentiary;

Respondents.

8:19CV486

MEMORANDUM AND ORDER

The Respondents filed a motion for summary judgment, Filing no. 9, supported by a designation of the relevant state court records, Filing no. 10, contending that the Petitioner missed the AEDPA (28 U.S.C. § 2244(d)) filing deadline by at least 667 days. Petitioner although, given an opportunity to respond, has not done so.

I adopt the facts and reasoning set forth in the Respondents' brief, Filing no. 11, as my own after independent investigation. I have also examined whether there might be some lurking basis for additional statutory tolling or any basis for equitable tolling. I found nothing. Therefore,¹

¹ A petitioner cannot appeal an adverse ruling on his petition for writ of habeas corpus under § 2254 unless he is granted a certificate of appealability. 28 U.S.C. § 2253(c)(1); 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). I have applied the appropriate standard and determined that Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED that the Motion for Summary Judgment, Filing no. 9, is granted and this case is dismissed with prejudice. No certificate of appealability has been or will be issued. A separate judgment will be issued.

Dated this 15th day of April, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge